

**REMARKS**

Claims 1-8 are pending in this application. Claim 1 is the sole independent claim. Favorable reconsideration of this application, in light of the following remarks, is respectfully requested.

Applicant appreciates the Examiner's indication that the Information Disclosure Statement filed on September 7, 2004, has been considered.

Applicant also respectfully notes that the present action does not indicate that the drawings have been accepted by the Examiner. Applicant respectfully requests that the Examiner's next communication include an indication as to the acceptability of the filed drawings or as to any perceived deficiencies so that the Applicant may have a full and fair opportunity to submit appropriate amendments and/or corrections to the drawings.

**Claim Rejections - 35 U.S.C. § 102**

Claims 1-8 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,640,838 (hereinafter "Isakson"). Applicant respectfully traverses this rejection for the reasons discussed below.

As shown in an example, non-limiting embodiment, FIGS. 1 and 2 of the present invention disclose a single-use valve for use on a package intended to be heated in a microwave oven. When the package is heated, the pressure inside the package may increase and as the pressure exceeds a certain value, the pressure load may cause the valve to open and emit a sound signal. Thus, the sound signal may alert the consumer that the food inside the package has been heated to a predetermined level.

By contrast, the Isakson reference discloses a deposit 44 adhere to a plastic film 42 of a vapor-tight package 40 intended to be heated in a microwave oven. The deposit 44 includes microwave-absorbing particles 16, such as graphite particles, and when the package is heated the deposit 44 causes the plastic film 42 to rupture, thus venting the package. (*See col. 5, lines 19-44*).

Applicant respectfully submits, however, that the features recited in claim 1 is novel over the Isakson reference since the Isakson reference does not disclose, or even suggest, a valve that emits a “sound signal.” The Examiner alleges erroneously that the Isakson reference discloses a valve that emits a sound signal; but it is nowhere or mentioned in the Isakson reference that this is the case. If the Examiner believes that the valve in the Isakson reference inherently discloses such a feature, the Examiner must provide evidence, instead of, merely suggesting a possibility that the valve emits a sound signal. That is, in order to support an inherency argument, the fact that a certain result or characteristic *may* occur or be present in the prior art is not sufficient. (MPEP § 2112, citing *In re Rijckaert*, 9 F.3d 1531, 1534, 28 USPQ2d 1955, 1957 (Fed. Cir. 1993)). Rather, the Examiner must present evidence that makes clear that the missing descriptive matter is *necessarily* present. The mere fact that a certain thing *may* result from a given set of circumstances is not sufficient. (MPEP § 2112, citing *In re Robertson*, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999)). However, the Isakson reference does not provide necessary support for alleging that the valve of Isakson inherently emits a sound signal.

In addition, it would not have been obvious to modify the Isakson reference. For instance, the Isakson reference does not teach any solution to the problem of how

to indicate to the consumer that the food inside the package is ready-cooked. The consumer is forced to open the oven and check the status of the plastic cover. Moreover, if the skilled person was faced with the task of indicating to a consumer that the deposit has caused a rupture in the plastic cover, then one skilled person would have to substantially modify the deposit in order to visualize that a rupture has occurred in the plastic cover. Thus, the skilled person would find no guidance from the Isakson reference to derive at the claimed invention. In addition, not all kinds of openings or valves would emit sound signals when having vapor pass therethrough, i.e., sound origin as the vapor is forced through an opening having certain properties and only certain valves are suitable for and adapted to do so.

Therefore, contrary to the Examiner's contention, the Isakson reference does not disclose or suggest each and every element of claim 1.

Since the Isakson reference fails to disclose each and every element of claim 1, it cannot provide a basis for a rejection under 35 U.S.C. § 102(b) and, thus, is allowable. Claims 2-8 depend from claim 1 and, therefore, allowable for the similar reasons discussed above with respect to claim 1.

For at least these reasons, the Examiner is respectfully requested to reconsider and withdraw the § 102(b) rejection of claims 1-8.

### **CONCLUSION**

In view of the above remarks and amendments, Applicant respectfully submits that each of the pending objections and rejections has been addressed and overcome, placing the present application in condition for allowance. A notice to that effect is respectfully requested. Further, the above remarks demonstrate the failings of the

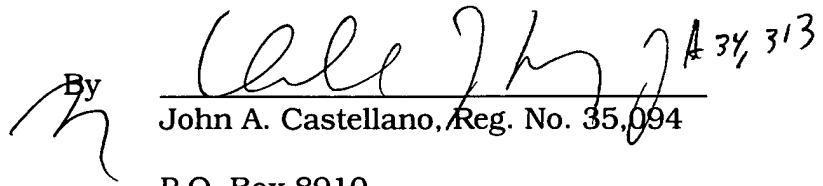
outstanding rejections, and are sufficient to overcome the rejections. However, these remarks are not intended to, nor need they, comprehensively address each and every reason for the patentability of the claimed subject matter over the applied prior art. Accordingly, Applicant does not contend that the claims are patentable solely on the basis of the particular claim elements discussed above.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact the undersigned, at the telephone number below.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 08-0750 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Respectfully submitted,

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